

**ZWILLMAN & ZWILLMAN**

*Counsellors at Law*

50 UNION AVENUE

IRVINGTON, NEW JERSEY 07111

EVAN W. ZWILLMAN

BLAIR R. ZWILLMAN

373-4444

AREA CODE 201

February 3, 1984

The Hon. Reginald Stanton, J.S.C.  
Superior Court Of New Jersey  
Morris County Court House  
Morristown, New Jersey 07960

RE: State of New Jersey, Department of  
Environmental Protection vs. Scientific  
Chemical Processing, Inc., et al  
Docket No. C-1852-83E

Dear Judge Stanton:

Enclosed please find a copy of a Cross Motion with  
supporting Affidavit in the above matter.

By copy of this letter I am serving all parties of  
record through their respective counsel indicated below.

Respectfully yours,

EVAN W. ZWILLMAN

EWZ:rf  
Encl.

cc: David W. Reger, Esq., Deputy Attorney General  
Clerk, Superior Court New Jersey (original)  
Harriet Sims Harvey, Esq.  
Edward J. Egan, Esq.  
Dominick Presto, Esq.  
Mr. Lief R. Sigmond  
Mr. Herbert G. Case

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**ZWILLMAN & ZWILLMAN**  
Counsellors At Law  
50 Union Avenue  
Irvington, New Jersey 07111  
(201) 373-4444  
Attorneys for John MacKay

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiff  
vs.  
SCIENTIFIC CHEMICAL PROCESSING INC., a Corporation, et al Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY  
DOCKET NO. C-1852-83E  
Civil Action  
AFFIDAVIT OF JOHN MAC KAY

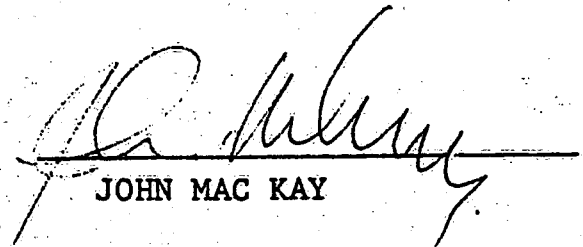
STATE OF NEW JERSEY :  
COUNTY OF ESSEX : ss

JOHN MAC KAY, of full age, being duly sworn according to law, upon his oath, deposes and says:

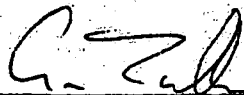
1. I entered into a Contract for Sale of property known as 743 Hope Street, Lodi, New Jersey with Michael Grella, Jr. and Dominick Presto on September 16, 1983 and closed title to one of the lots, Lot 36 and 37A in Block 157 on December 19, 1983.

2. I was never informed by the sellers, or anyone else, that there was a lien on the property imposed by this Court on June 16, 1983. Quite to the contrary, Michael Grella Jr.

permitted me access to the property to go into construction prior to the closing date without mention anything about this lien.

  
JOHN MAC KAY

Sworn and subscribed to  
before me this 3 day  
of February, 1984.

  
EVAN W. ZWILLMAN  
An Attorney At Law Of  
The State Of New Jersey

ZWILLMAN & ZWILLMAN  
Counsellors At Law  
50 Union Avenue  
Irvington, New Jersey 07111  
(201) 373-4444  
Attorneys for John MacKay

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STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION, Plaintiffs	:	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: ESSEX COUNTY
vs.	:	DOCKET NO. C=1852-83E
	:	Civil Action
SCIENTIFIC CHEMICAL PROCESSING INC., a Corporation, et al	:	CROSS NOTICE OF MOTION
Defendants	:	

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TO: CLERK OF THE COURT

HARRIET SIMS HARVEY, ESQ.  
71 Spring Lane  
Englewood, New Jersey 07631

EDWARD J. EGAN, ESQ.  
1073 E. Second Street  
Box 190  
Scotch Plains, New Jersey 07076

DOMINICK PRESTO, ESQ.  
PRESTO & BARBIRE  
18 Glen Road  
Rutherford, New Jersey 07070

MR. LEIF R. SIGMOND  
215 Comanche Drive  
Ocean Port, New Jersey 07757

MR. HERBERT G. CASE  
71 Mountainview Terrace  
Dunnellen, New Jersey

DAVID W. REGER, ESQ.  
Deputy Attorney General  
Richard J. Hughes Justice Complex  
CN-112  
Trenton, New Jersey 08625

PLEASE TAKE NOTICE, that on Friday, February 10, 1984  
at 9:00 in the forenoon, or as soon thereafter as counsel can be

heard, the undersigned, attorneys for John MacKay, intervenor, shall move before The Honorable Reginald Stanton, at the Morris County Court House, Morristown, New Jersey, for an Order:

1. Granting leave to intervene in the subject litigation.

2. Modifying the order entered on June 16, 1983 to permit the transfer of property known as Block 157, Lots 36 and 37A, Lodi, New Jersey to John MacKay.

3. For such other relief as the Court may deem just.

The undersigned will rely upon the attached Affidavit and oral argument in support of this application.

DATED: February 3, 1984

ZWILLMAN & ZWILLMAN

By: /S/ EVAN W. ZWILLMAN  
EVAN W. ZWILLMAN  
Attorney for John MacKay

I certify that the within Motion was filed and served upon all parties listed in the Cross Notice of Motion as prescribed by the Rules of the Court.

DATED: February 3, 1984

ZWILLMAN & ZWILLMAN

By: /S/ EVAN W. ZWILLMAN  
Evan W. Zwillman

AFFIDAVIT OF EVAN W. ZWILLMAN

STATE OF NEW JERSEY :  
COUNTY OF ESSEX : ss

EVAN W. ZWILLMAN, of full age, being duly sworn according to law, upon his oath deposes says:

1. I am an Attorney at Law of the State of New Jersey, a partner in the law firm of Zwillman and Zwillman, and the attorney retained by John MacKay for the purchase of property commonly known as 43 Hope Street, Lodi, New Jersey (Lots 36 and 37A in Block 157, Borough of Lodi, County of Bergen, State of New Jersey).

2. On September 6, 1983 a contract was entered into between Michael Grella, Jr. and Dominick Presto, partners trading as G.P.S. Associates, sellers of said property and John MacKay, purchaser. The purchase price was set at \$70,000.00. A copy of the contract attached hereto as Exhibit "A". Said property is comprised of two unimproved lots which have been properly subdivided pursuant to approval of the Borough of Lodi Planning Board.

3. On December 19, 1983 a closing of title took place wherein Mr. MacKay consummated the purchase of one of these Lots which were the subject matter of this contract. (Lot 36,37A).

The remaining Lot did not close because of problems relating to an erroneous survey and a subsequent corrective survey.

4. The closing of title was delayed from the date set forth in the contract, September 15, 1983 to December 19, 1983 because of the aforementioned erroneous survey. In the interim, this deponent spoke by telephone and by written communication to Paul S. Barbire, attorney for sellers, on numerous occasions concerning the setting of a closing date. At no time prior to the closing of title on December 19, 1983, did Mr. Barbire or anyone else inform this deponent of the Order entered by the Court on June 16, 1983 which purportedly enjoined Grella and Presto from conveying any property owned by them in the State of New Jersey. The first this office was aware of said Order was sometime subsequent to January 17, 1984 when John MacKay, having been served with a copy of the Notice of Motion returnable February 10, 1984, supplied a copy of said Notice of Motion to this deponent.

5. It is beyond dispute that John MacKay is a bonafide purchaser for value with no notice of the alleged lien imposed upon this property. Prior to the closing of title a "Preliminary Certificate and Report on Title" was obtained from Stewart Guaranty Title Company dated September 19, 1983 and was run down to the date of closing. A copy of this document is attached hereto as Exhibit "B". The document contained the

results of an upper court (Trenton) search, a county search and the local (Municipal) search. The Superior Court of New Jersey search was run down for twenty (20) years as to the following named individuals:

Michael Grella, Jr., Dominick Presto, Leif

R. Sigmund, G.P.S. Associates and John MacKay

This search was performed on September 19, 1983 by Superior Title Search Company, Trenton, New Jersey and was run down to December 19, 1983. For whatever reasons, the Order entered by the Court on June 16, 1983 imposing a lien on properties owned by Grella and Presto was never made a lien of record.

6. The above referred to "Preliminary Certificate and Report of Title" is complete in accordance with the laws of our State. All proper recording offices were checked for any liens and/or judgments of record as follows:

1. Instruments recordable in the Office of County Clerk or Register.
2. Instruments recordable in the County Surrogate.
3. Instruments recordable in the Office of the Clerk of the New Jersey Superior Court.
4. Instruments recordable in the Office of the Clerk of the United States District Court for the District of New Jersey.
5. Instruments recordable in the Office of the Department of State. (N.J.)

(See 13A N.J. Practice 3rd Ed. Sec. 1561 through 1568).

7. Intervenor, John MacKay, had no actual notice or constructive notice of the Order entered by the Court on June 13, 1983. Accordingly, he should not be prejudiced and the conveyance to him for value without notice should not be voided.

/S/ EVAN W. ZWILLMAN

EVAN W. ZWILLMAN

Sworn and Subscribed to  
before me this 3rd day  
of February, 1984.

/S/ BLAIR R. ZWILLMAN

BLAIR R. ZWILLMAN  
An Attorney At Law Of  
The State Of New Jersey